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From:

Sent: Thursday, April 02, 2009 4:19:55 PM

To:

Cc:

Subject: RE: GATT vs. non-GATT

I think the GATT rate applies to the extent the overpayment exceeds \$10k. It seems to me that a section 460(b)(2)(B) overpayment is an overpayment of tax -- the tax liability is accelerated and the tax is overpaid in the redetermination year. Moreover, section 460(b)(7) clearly provides that the "overpayment rate" under section 6621 applies, and the GATT rate is part of the section 6621 "overpayment rate." Finally, at least three courts have concluded that overpayment interest is an 'overpayment of tax' for purposes of section 6621(a)(1). Cf. Exxon Mobil, 484 F.3d 731 (5th Cir. 2007); General Electric Co., 384 F.3d 1307 (Fed. Cir. 2004); State Farm, 126 T.C. 28 (2006). Please call me if you have any questions.